

(1877) 01 AHC CK 0003
In the Allahabad High Court

Stowell, Manager Uncovenanted Service Bank Limited	APPELLANT
Vs	
Billings	RESPONDENT

Date of Decision : 31-01-1877

Acts Referred:

Citation : (1875) ILR (All) 350

Hon'ble Judges : Robert Stuart, C.J;Spankie, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The Judge holds that as Act XIV of 1859 was in force in March 1873, when the notice to show cause was issued, there was "a proceeding to enforce or keep in force a decree," and therefore the present application made within three years from that date is within time.

1. But respondent's counsel contends that in 1873, when the above proceedings took place, the decree which appears to be dated 5th January 1869, was dead, and that it was even so if the time be reckoned from the 7th September 1869, when the arrangement referred to was made. He also contends that no arrangement made between the parties though recognised by the Court can enlarge the period allowed by law for the execution of decrees, nor can the terms of a decree be varied by the Court executing the decree, and in support of this contention he cites the Full Bench ruling of the Calcutta Court dated 4th September 1869 4 C.L.R. F.B. Rulings p. 101, Krishna Kamal Singh, D.H., v. Hira Sirdar and Ors., and a decision of this Court to the same effect I.C.R. N.W.P. 1873 p. 100 Abas Imam, Appellant. This Court referred to the ruling of the Calcutta High Court already referred to and held that the receipts of instalments by a decree-holder out of Court in pursuance of a compromise made between him and his judgment-debtor is not a proceeding to enforce or keep in force a decree, and the Court added that the condition in a compromise that on default being made in a certain number of instalments, the decree should be executed in full, cannot prevent limitation from running. This Full Bench decision of the

Calcutta High Court held that such a compromise, even though recognised by the Court executing the decree, could not enlarge the limitation, and therefore the ruling in that case applies more strictly to the case before us than the decision of this Court. But the principle is the same in both cases.

2. When the two instalments fell due in May and June 1872, more than three years had expired since the date of the decree and the fact that there were proceedings in 1873, which would make the application of 1876 within time, if we think of no service) to the decree-holder. We must look behind the application of 1873 when pressed upon the point of limitation, and as more than three years had elapsed between the 7th September 1869 and 15th February 1873, the claim to execute the decree then and now is clearly barred.

3. We are, therefore, compelled to dismiss the appeal and reverse the order of the Judge, and we must do so with costs as the objections now urged by respondent were taken below.